

30. Continuation of a First and Only Public Hearing on a Proposed Ordinance Amending the Official Zoning Map Rezoning Approximately 107-Acre Parcel, Located on the West Side of North Monroe Street, on the East Side of Old Bainbridge Road and North of Perkins Road, from Lake Preservation to the PUD Zoning District

Pursuant to legal advertisement, a public hearing was conducted.

County Attorney Thiele explained for the record, that yesterday afternoon, the Board received the report from the special council that legal staff was directed to retain (from October 12, 2004 Board meeting) which was given to the Board secretary for the record.

(At the October 12 meeting, Commissioners were instructed to not discuss the issue or open emails since it was a quasi judicial issue.)

Commissioner Grippa provided copies of all the parties that have contacted his office including emails and discussions for the public to review regarding this issue pursuant to direction on October 12, 2004.

Chairman Sauls encouraged speakers to not speak again on this item if they spoke on October 12th unless they had different information.

Chairman Sauls circulated three emails that she opened and explained that she did not know that they dealt with Summerfield PUD. She also advised that yesterday at the MPO meeting, Tom Taylor told her that the Summerfield PUD issue could be referred to the Florida Conflict Resolution and mediation was an option. Commissioner Grippa disclosed that he too heard the comments from Mr. Taylor. Chairman Sauls also disclosed that yesterday afternoon, a plant was delivered to her office with a card from Jeff Phipps, and flowers and a frog were delivered today with a note from L.J.

Commissioner Winchester noted that he was directed by the Board to meet with the developers and their attorneys. He explained that he met last Friday and the main issue continues to be the suitability and impact of apartments in the proposed PUD development.

Commissioner Rackleff reported that he received approximately 10 emails and he archived them.

County Attorney Thiele advised that he is provided a package that Commissioner Grippa prepared including emails and letters on the subject matter to the clerk for the record. Mr. Thiele announced that today Commissioners received a letter from A Thousands Friends of Florida and an email from Charles Gardner, representative of the subject property owner, on the subject matter and the items will be provided to the Clerk for the record.

Commissioner Thaell explained that he received some questions from Matt Oresco and document from George E. Lewis, II, and received many emails, which his Aide responded to, and Commissioner Thaell was not privy to. He also received an analysis of the PUD concept plan and analysis.

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Commissioner Maloy announced that Missy Patton came to see him today briefly and voiced concern that the review from the independent attorney was not attached to the agenda item. She wrote him a letter but he did not open it and has not opened emails on the subject pursuant to Board direction on October 12, 2004.

County Administrator Alam advised that GEM staff received a letter was AJTV Architectural and Engineering Firm which included a letter to Bryan Waterman, Department of Community Affairs.

Mr. Thiele commended Attorney Sylvia Alderman for her assistance and turn-around time for providing the analysis.

The following citizens appeared:

Charles Gardner, Attorney representing the Sellars Family, stated that whether or not an environmental analysis should be required in this concept plan. Staff has been consistent that one was not needed and the law indicates that it is not mandatory. He stated that the Board has the option to say whether or not they want an environmental analysis. Mr. Gardner stated that it was hard to do an environmental analysis on a concept where there is no actual lot lines and buildings to show what is actually being impacted. He stated that the time to do that is when the final plan is reviewed and staff has the experience and knowledge to do that. He reminded the Board that this is a rezoning of property and it is not a site plan, the developer is at risk since he may or may not be able accomplish what he plans to do, but the zoning has to be in place first. He announced that he sent an email this afternoon and circulated it for the record which states that the access onto Old Bainbridge Road is not an issue since the applicant is willing to construct a cul de sac. It also explains that the parties met in good faith with Commissioner Winchester but were not successful. Mr. Gardner added that this is a commitment to an amendment to the PUD tonight, to treat basin SR-1 which is the basin that has the berm in it, and to go with open basin, lake protection standards.

Andres Byrne, 329 Lake Ridge Drive, counsel representing Arbor Properties, stated that his client met with Commissioner Winchester in good faith and thought that they reached a compromise they could live with, but Commissioner Winchester could not support it. Mr. Byrne stated that he is agreeable to all of the conditions placed on the favorable recommendations by the Planning Commission including that there be no access to Old Bainbridge Road. He also agreed that all lake protection land use standards will apply to basin SR-1 as if it were an open basin. Notwithstanding to the recently added berm, he will abide by whatever the relevant government entities require them to do with the berm, either leave it or remove it. He urged the Board to approve the rezoning request.

Commissioner Winchester explained that other items were discussed with the parties ranging from space ration, walkability of the site, landscaping, building height, visual impact. He distributed proposed conditions which were talked about at the meeting and some additional things and his intent is that these items would be a condition of the approval of the development order. Mr. Thiele stated that the material that Commissioner Winchester distributed is not the application before the Board; the application as recommended by the Planning Commission is before the Board.

C. C. Sellers, 8179 Glenwood Drive, stated that he represents the Sellers Family on this ²₁

matter, and stated that his mother wanted a development that would enhance the surrounding properties. He urged the Board to support the project.

Paul Earnhart, P. O. Box 3210, stated that he owns property adjoining the subject property and referenced an email National Association of Realtors suggesting that people would like to live in areas where there are sidewalks and places to walk and easy access to highways and within 45 minutes to work.

Jeff Phipps, 500 Orchard Pond Road, stated that it is possible that the subject property and surrounding areas could flood like it did in 1966. He pointed out how his property would be adversely impacted if flooding occurs.

Pat Wright, 4480 Cool Emerald Drive, Lakeside Subdivision, member of the Board of Directors of the Home Owners Association, advised that he was opposed to the apartments and additional traffic on North Monroe Street and Old Bainbridge Road. He stated that the development should conform to the existing neighborhood.

Joanne Kowal, 4871 Old Bainbridge Road, gave some background information of the area and the sinkholes. She stated that Lake Jackson Basin was riddled with karst and stated that the Environmental Impact Analysis (EIA) should be completed prior to the approval of the conceptual plan since there are many unknowns.

Olin Granthum, 2600 Lucerne Drive, Lake Breeze Subdivision, stated that a nice upscale subdivision was needed in the area.

Jane Quinton, 1916 Hidden Valley Road, representing Tallahassee Garden Club, concerned about preserving patriarch oaks and wanted to promote canopy trees.

Alan Niedoroda, 6000 Miller Landing Road, showed an aerial photograph of the subject area, voiced concern about additional water runoff and urged the Board to reject the proposed PUD.

C. B. Subrahmanyam, 1257 Cornerstone Lane, provided his comments in response to Attorney Alderman's conclusions. He went through the items and explained his responses (as shown in the correspondence) and urged the Board to deny the request.

Marion Nimis, 2105 Miller Landing Road, appeared and stated that, if the PUD is approved, the Board should carefully monitor and control the development.

Leah Ellington, 789 Livingston Court, voiced opposition to the PUD.

C. Tomoka Brady, 5885 Old Bainbridge Road, talked about trash on the shoreline, opposed

Bob Pannell, 2801 Glennis Court, representing Gwyndale Neighborhood, appeared and expressed opposition to the proposed development.

Matt Aresco, 754 Livingston Court, appeared and expressed opposition to the project.

Ann Bidlingmaier, 1920 Harriett Drive, expressed opposition to the PUD and suggested that an environmental analysis should be done before rezoning. She also circulated an

article regarding environmental issues.

Stan Derzypolski, 4345 Johnson View Drive, indicated concern about the density of the project and suggesting compromising.

Becky Subrahmanyam, 1257 Cornerstone Lane, expressed opposition and referred to her written comments which were presented to the Board involving the LDRs (land development regulations). A copy of Mrs. Subrahmanyam's comments were submitted to the Clerk for the record.

Nancy McGrath, 3022 Southshore Circle, read email from Dr. Sherwood (Woody) Wise, urging the Board to continue providing Lake Protection. Ms. McGrath also spoke about traffic concurrency and reported that north U.S. 27 would not be expanded for decades.

Kate Calvin, 1918 Longview Drive, suggested that the existing area has affordable housing, and additional affordable housing is not necessary. She indicated that many of the speakers in favor of the PUD are on the staff of Arbor Properties.

Bruce Ryan, 1932 Queenswood Drive, stated that Lake Jackson is an asset to the County and spoke about the "view shed" which is the view of the lake and brings eco-tourism to the County. He indicated that the apartments would that is seen on the lake an adverse affect to the lake and urged the Board to deny the PUD.

Commissioner Proctor referred comments from a speaker who referred to a statement about NAACP about Arbor Properties. Commissioner Proctor clarified that NAACP is not employed by Arbor Properties, is not speaking for Arbor Properties, and is not paid by Arbor Properties.

Victor L. Moore, Sr., 32264 Brewster Highway, Midway, Fl., spoke in favor of new homes and apartments in the subject area.

Maria G. Carona, 8452 Sandlewood Drive, W. stated that Tallahassee is growing and new subdivisions are necessary.

Keli Thorn, 2750 Old St. Augustine Road, remarked that the project is a good idea and favored the apartments in the subject area.

Michael Brezin, 1501 N. Randolph Circle, referred to comments from the last meeting suggesting that opposition to the project might be racially motivated. He stated that the existing area is racially diversified and that it is not the reason there is opposition to the PUD. Mr. Brezin stated that the murkiness of the legal issues is a paramount issue and urged the Board to deny the rezoning thereby protecting the canopy road, the lake, and providing public safety.

Remigio Cantu, 8452 Sandlewood Drive, spoke in favor of the new development and stated that he plans to move to the area if it is approved.

Dan Collins, 2750 Old St. Augustine Road, indicated that Tallahassee needs to move forward with progress and supported the rezoning.

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Tyler Macmillan, 741 Litchfield Road, referred to the information submitted by Ms. Alderman, the counsel that was retained to conduct an analysis. He explained the process that staff went through suggesting that the first recommendation was denial then other staff suggested that a variance could be granted. Mr. Macmillan stated that Ms. Alderman's report indicated that a variance could not be available. He stated that he is not opposed to development at the subject site but that it should be appropriate development which is single family lots.

Lilly Thames, 199 Mill Branch, appeared and stated that the citizens who are in favor of the development are a diverse group of people. She asked citizens in the audience to stand who favored the development and approximately 30-40 citizens stood.

George E. Lewis, II, 203 North Gadsden Street, #6, referred to his written material which was circulated and listed some of the following reasons he felt the PUD should be denied: premature; lacks Environmental Impact Analysis; DRC did not process the application properly – should have been considered at a regular meeting; Planning Commission meeting did not comply with the procedural for quasi-judicial proceedings; must be published at least 15 days before the scheduled action by the Planning Commission; due process has not been afforded in this case. Mr. Lewis urged the Board to remand this back to the DRC to process it under whatever conditions the Board intends to impose upon it.

Tom Nelson, 642 Doris Drive, stated that he is not opposed to development but he wants to ensure that lake protection is provided. He read a letter to the Board from Charles Patterson, Executive Director, Thousand Friends of Florida, indicating concern that the Board is being asked to approve the Summerfield PUD plans prior to FDEP Dredge and fill water issue being properly vetted and that certain development assumptions may have been incorrectly stated, namely, that the use of the closed basin concept within the greater Lake Jackson and its relationship to the dredge and fill actions now under review and other issues. The letter requested that the Board not take action upon the issue today, but that the lake protection rationale be revisited to ensure that there is no further degradation of Lake Jackson.

Richard Reeves, 5314 Pimlico, representing applicant, explained that the Comprehensive Plan includes one of the most stringent environmental documents in the state and here is a developer who has worked with staff and met all codes and requirements, and is at the final step of the rezoning portion and there is a movement to do away with that. He indicated frustration after responding to issues raised by individuals and then other issues are brought forward. Mr. Reeves requested that the Board vote favorably on the issue.

County Attorney Thiele requested clarification and stated that based on his understanding upon what the parties discussed this evening, there are two changes to the application: 1) the applicant has agreed to not seek a canopy cut of any kind and 2) the development will be developed in accordance with lake protection zoning whether or not the berm is removed (in that pod). Mr. Reeves responded in the affirmative.

Mr. Thiele stated that the public hearing portion is now closed.

Commissioner Winchester moved and was duly seconded by Commissioner Rackleff to approve Option 4: Conduct the public hearing and do not adopt the proposed ordinance

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amending the Official Zoning Map; retain the present LP, Lake Protection zoning district, based upon the findings made on the record at the public hearing tonight and the public hearing on Oct 12, 2004, and consistent with Zone A and Zone B requirements.

Commissioner Winchester stated that he felt that this was a worthy project but that it was in the wrong location. He read a portion of a letter that was received today which indicated that it was inappropriate to purchase property across the highway (Pelham property) to prevent development and now the Board was considering approving development which allows, among other things, three-story apartments across from Lake Jackson. Commissioner Winchester indicated that some 500 units were not appropriate on the 107-acre property.

Commissioner Grippa inquired of staff if an EIA was needed for a conceptual PUD. John Kraynak, GEM, responded that staff has reviewed a lot of information regarding the EIA application including checking stormwater and flood planes, and it was staff's opinion that they do not need to have a completed approved Environmental Impact Analysis for a conceptual PUD. Mr. Kraynak indicated that it involves more of a cleanup type thing and can be accomplished at the final PUD and they could move forward on the conceptual standpoint. He confirmed that they would need a final EIA before the final PUD. County Attorney Thiele opined that this was an accurate statement made by Mr. Kraynak.

Commissioner Grippa moved a substitute motion, seconded by Commissioner Proctor to approve Options 1 and 2, with the caveat that the open basin remain lake protection, that there is no canopy road cut, and the other recommendations by the Planning Commission and DRC are followed through completely prior to any final approval of this and that there be a final Environmental Impact Assessment (EIA) at final PUD approval:

Option 1: Conduct the first and only public hearing and adopt the proposed Ordinance, Leon County Ordinance Number 04- , amending the Official Zoning Map changing the zoning of approximately 107 acres from the LP zoning district to a PUD zoning district, based upon the findings and recommendation of the Planning Commission as set out in this agenda item;

Option 2: Adopt the applicant's proposed concept plan, subject to those conditions as recommended by the Planning Commission, based upon the findings and recommendations of the Planning Commission set out in this agenda item.

Commissioner Thaeli referenced the document presented by outside counsel, Sylvia Alderman. He stated that it is not known what the maximum allowable densities and intensities are in the PUD and suggested that the item go back through the DRC process.

Commissioner Proctor stated for the record that he believes the berm should remain in place since it benefits the lake.

Chairman Sauls asked the County Attorney if the motion on the floor was consistent with the outside attorney's findings. Mr. Thiele stated that it was, with one exception; the County Attorney's opinion is that the County is not granting a variance but is requiring the environmental impact assessment to happen at the final PUD approval. 4

He stated that Ms. Alderman's (outside counsel) issue was that the County does not have the authority to grant a variance. Mr. Thiele opined that a variance is not being granted but are indicating that the County will require it at the final PUD rather than at concept plan. (The Chairman clarified that this is part of the motion, that it be completed prior to the final PUD.) Mr. Thiele opined that this was in accord with the Land Development Regulations.

Sylvia Alderman, attorney who was retained to conduct an analysis, explained that the bottom line on the environmental assessment is that staff had enough information to make the recommendation that they did and that it was acceptable. She stated that it is true that the County does not have the authority to grant a variance, however there is language in the ordinance itself that allows staff to accept something less than a complete Environmental Assessment.

Gary Johnson, Growth and Environmental Management, advised that staff had enough information on the environmental impact analysis for the rezoning request before the Board.

Chairman Sauls asked if the County could require that the final review and approval come back before the Board for site development plan and Mr. Thiele answered in the affirmative. She also suggested, if the motion passes, that staff look at a Type D buffer on the multi-family component which provides for a more intense buffer than Type B. Commissioner Grippa amended his substitute motion to include a Type D buffer.

Chairman Sauls inquired about the site plan coming back to the Board and Commissioner Grippa stated that he did not want the entire project to come back and be discussed again but he does not mind if the Board takes public testimony on whether the applicant had complied with Board direction.

Commissioner Grippa amended his substitute motion to take public testimony or rule on whether the applicant and staff had complied with the Board's direction (but not on the entire project).

Commissioner Winchester distributed a list of proposed conditions of approval of development order, which included open space, Canopy Road access, berm, enhanced landscape plan, apartments and non-residential uses, final site plan and review, walkability, and traffic mitigation. He recommended that these issues be part of the amendments. Commissioner Grippa suggested that this was staff's responsibility and proposed that Commissioner Winchester continue to work with the developer on the issues. Commissioner Winchester stated that during negotiations with the developer they basically agreed in principle with some of the items, but he would like to see these as parameters to be negotiated in the PUD. Commissioner Grippa stated that some of the items have already been worked out and he feels that some of the others could be worked out with the developer over a period of time.

Commissioner Grippa clarified that his motion is to approve the PUD, that it come back so the Board can ensure that it meets every criteria, not to redo the site plan here.

Commissioner Proctor stated that he could not vote for the project unless it included W/MBE participation. Mr. Thiele explained that this is a rezoning, not a County project. Commissioner Grippa amended his motion to include the County's W/MBE requirement. 1

in the plan. The developer indicated that he would attach a W/MBE plan.

Chairman Sauls clarified the substitute motion on the floor: To approve Options 1 and 2 and the final PUD approval and site plan come back before this Board to ensure that it complies with the law; that it include a Type D buffer (rather than Type B), and a W/MBE plan be attached.

The substitute motion, as amended, carried 4 – 3 (Commissioners Rackleff, Thael, and Winchester voted in opposition.

See attached Leon County Ordinance Number 04-40

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